Annex 15

Summaries of Selected Cases on Code on Access to Information

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

Buildings Department ("BD") and Food and Environmental Hygiene Department ("FEHD")

Case Nos. OMB 2008/0155(I) – 0156(I)

Access to information – failing to heed the complainant's request for a copy of the seepage test report concerning his unit – substantiated

Request Refused

The Joint Office ("JO") of BD and FEHD had conducted a test in the complainant's unit for water seepage. The complainant subsequently asked for a copy of the investigation report but was refused.

Code on Access to Information

2. Government's Code on Access to Information ("the Code") aims to be as open and transparent as possible. It stipulates that the Access to Information Officer ("AIO") in any department should ensure that requests for information be handled according to the spirit of the Code. Refusal of such requests should best be decided at the directorate level and the applicant informed of the decision in writing, citing the reasons applicable set out in Part 2 of the Code. Such reply is also to give information on the channels for departmental review and complaint.

Handling of Request

3. FEHD would provide a copy of the "seepage test result" upon request. However, it considered the information requested to be a copy of the "seepage investigation report". It, therefore, referred the request to BD.

4. Meanwhile, BD considered the seepage investigation report a document for JO's internal use only, as it contained information about the interior condition of the units involved, professional opinions of its investigation team and certain personal information. Consequently, it refused the complainant's request for a copy of the report.

Initiative Lacking

5. We considered that FEHD should have taken the initiative to explain to the complainant that JO could provide the "seepage test result" and upon completion of the seepage investigation, a summary of the findings.

Procedures Not Followed

6. BD did not consult its AIO before refusing the complainant's request. Nor was the decision made at the directorate level. Furthermore, it had failed to give reasons as set out in the Code or the

review and complaint channels. As a result, the complainant could not understand the rationale for the decision and was not sure about availability of review. In short, his request had been badly handled.

7. The Ombudsman considered this complaint substantiated.

Recommendations

8. The Ombudsman recommended that JO apologise to the complainant. Moreover, BD should identify which part of the seepage investigation report could be disclosed according to the Code. It should also revise its internal guidelines to ensure that all requests for information would be processed in accordance with the spirit of the Code.

A case of deficiency in policy implementation